

2014 WL 3592593 (Del.Ch.) (Trial Pleading)
Chancery Court of Delaware.

In the Matter of the Estate of Bobby J. FREEMAN, Deceased.

No. 9900-MA.
July 18, 2014.

Caveat Against the Allowance of an Instrument as A Will and Complaint to Rescind Transfer of Property

Hudson, Jones, Jaywork & Fisher, LLC, [Adam C. Gerber](#), Esquire, I.D. No. 4653, 225 South State Street, Dover, Delaware 19901, (302) 734-7401, for petitioners.

NOW COME, Caveators, Deshaun Freeman, Minnie Ellis, and Maryetta Freeman, by and through their undersigned counsel, Adam C. Gerber, Esquire of Hudson, Jones, Jaywork & Fisher, LLC, who hereby file this Caveat to the admission to probate of the purported Last Will and Testament of Bobby J Freeman dated April 2, 2014, and Complaint to Invalidate Transfers of Property, and in support of said Caveat and Complaint state as follows:

1. Caveator Minnie Ellis resides at 117 Portside Drive, Bear, Delaware 19702. Ms. Ellis is the sister of Bobby J. Freeman.
2. Caveator Maryetta Freeman resides at 307 Evergreen Drive, Newark, DE 19702. Ms. Freeman is the niece of Bobby J. Freeman.
3. Caveator Deshaun Freeman resides at 1811 Apt-D, Dayton Street, North Charleston, SC 29405. Dushaun Freeman is the biological son of Bobby J Freeman.
4. Cheryl Springs ("Springs") resides at 220 Tralee Drive, Middletown, Delaware 19709.
5. On or about December 14, 2005, Bobby J. Freeman, executed a Will. A copy of that Will is attached hereto as Exhibit A and incorporated by reference herein.
6. The Will dated December 14, 2005, names Minnie Ellis and Michael Mitchell as beneficiaries of Mr. Freeman's Estate. The Will names Randee Briggs, Stephen Briggs, and Maryetta Freeman as contingent beneficiaries of Mr. Freeman's estate. The Will names Mr. Freeman's sister, Minnie Ellis, as the personal representative of his estate.
7. Upon information and belief, at some time in the summer of 2013 Respondent Springs met Bobby J. Freeman on the telephone when he called the alarm company where she worked in order to schedule a repair. (*See* Affidavit of Maryetta Freeman, Exhibit B.)
8. Soon thereafter, it is believed that Respondent began a secret relationship of some nature with Mr. Freeman.
9. Upon information and belief, in August of 2013 Respondent placed a number of charges on Mr. Freeman's credit cards. (*See* Exhibit B.) These charges include a charge of \$3,500.00 paid to Respondent's cleaning company, Cheryas'mon Cleaning Consultants of Delaware City. Other charges were made on Mr. Freeman's credit cards totaling an additional \$3,078.02.
10. Caveators do not believe that Mr. Freeman had knowledge of these charges or gave consent for such charges to be made by Springs. (*See* Exhibit B.)

11. At some time in August 2013 Mr. Freeman fell in his home and was unable to get up. He had been stuck on the floor for approximately two days before his nurse, Rebecca Hopman, and his niece, Marianna Freeman, found him. (*See* Affidavit of Marianna Freeman, Exhibit C.)

12. Ms. Freeman and Ms. Hopman called the paramedics and Mr. Freeman was transported to Christiana Hospital. (*See* Exhibit C.)

13. After a stay at Christiana Hospital, Mr. Freeman was taken to Cadia Rehabilitation Center in Pike Creek, Delaware. (*See* Exhibit C.)

14. During this time, and in the continuing months, Springs continued her relationship with Mr. Freeman and continued to exert control over him.

15. Mr. Freeman's family became so concerned for his safety and well-being that, in September 2013 they filed an official complaint of **Elder Abuse** with the Division of Service for Aging and Adults with Physical Disabilities. (*See* Exhibit B.)

16. On or about April 2, 2014 a new Will was executed, purportedly by Bobby Freeman, in New Castle Delaware. A copy of that second Will is attached hereto as Exhibit D and incorporated by reference herein.

17. Under the terms of that new purported Will, all of Mr. Freeman's family members are disinherited and two new beneficiaries are named: Respondent Cheryl Springs, and her son, Yamon Ahmad Springs. Suspiciously, in the new Will, Yamon Ahmad Springs is named as the son of Bobby Freeman.

18. The April 2, 2014 Will was notarized by two individuals: Rita Smith, with an address listed as 520 Bancroft Parkway, Wilmington, Delaware; and Edwin Roy Lushbaugh, whose address is listed as 364 E. Main Street, Middletown, Delaware. The new Will was notarized by Andrea Elizabeth Bello.

19. On May 2, 2014 Bobby Freeman passed away. A copy of his Death Certificate is attached hereto as Exhibit E and incorporated by reference herein.

20. On or about May 7, 2014 Springs petitioned the Register of Wills of New Castle County for authority to act as personal representative of the Estate of Bobby J. Freeman. A copy of the Adjudication is attached hereto as Exhibit F and incorporated by reference herein.

COUNT I - FRAUD

21. Caveators restate and reincorporate paragraphs 1-20 herein as if set forth in their entirety here.

22. Caveators hereby object to the probate of the purported Will dated April 2, 2014 because the signature on that Will is not the signature of Bobby J. Freeman.

23. A comparison of the Will dated December 14, 2005 and the Will dated April 2, 2014 reveals that the purported signature of Bobby J. Freeman is vastly different between the two.

24. Upon information and belief, the signature on the April 2, 2014 Will purporting to be the signature of Bobby J. Freeman is a forgery and, consequently, the Will dated April 2, 2014 is of no force and effect.

COUNT II - LACK OF CAPACITY

25. Petitioners restate and reincorporate paragraphs 1-24 herein as if set forth in their entirety here.

26. In the alternative, if the Court finds that the signature on the April 2, 2014 Will is the signature of Bobby J. Freeman, such signature could not have been the product of a sound mind.

27. The health and mental capacity of Mr. Freeman had been in decline since his admission to Christiana Hospital and subsequent admission into Cadia Rehab facility.

28. Caveators assert that the purported Will dated April 2, 2014 is not valid in that Mr. Freeman was not possessed of a sound mind and memory at the time of executing the Will (if the signature on such Will is, in fact, his signature), and, consequently, that he did not possess the necessary testamentary capacity and/or was unduly influenced by Springs to execute the new Will.

COUNT III - UNDUE INFLUENCE

29. Caveators restate and reincorporate paragraphs 1-28 herein as if set forth in their entirety here.

30. Upon information and belief, Springs exercised undue influence over the decedent, Bobby Freeman, in the following manner in that she took advantage of his advanced age and declining mental and physical health to turn him against his family.

31. As a result of undue influence by Springs over Mr. Freeman, the rightful beneficiaries of the Estate of Bobby J. Freeman have been eliminated from Mr. Freeman's estate plan.

32. Upon information and belief, Springs exercised undue influence to exploit and influence Mr. Freeman to execute a new Will which bequeathed Mr. Freeman's entire estate to Springs and her son.

COUNT IV - CONSTRUCTIVE TRUST

33. Caveators restate and reincorporate paragraphs 1-32 herein as if set forth in their entirety here.

34. A constructive trust may be imposed by this Court, in the exercise of its equitable powers, when an individual's fraudulent, unfair, or unconscionable conduct causes that person to be unjustly enriched at the expense of another to whom he owes a duty. [*Adams v. Jankouskas*, Del. Supr. 452 A. 2d. 148 \(1982\)](#). Simply stated, this Court will impose a constructive trust "for the purpose of working out right and wrong." *Id.*

35. Caveators seek equitable intervention from this Honorable Court to impose a constructive trust over Caveators' equitable interest in the assets of the estate of Bobby J. Freeman, in order to prevent the unjust enrichment of Springs and her son for her wrongful conversion of Caveators' interest in that property.

COUNT V - RESCISSION OF TRANSFER OF PROPERTY

36. Caveators restate and reincorporate paragraphs 1-35 herein as if set forth in their entirety here.

37. As a result of the undue influence exerted by Springs, Mr. Freeman purportedly disinherited his entire family from his estate plan and transferred certain property to Ms. Springs.

38. Based on the unconscionable and wrongful conduct of Springs, Caveators should be entitled, in the alternative, to rescission of any transfer or property, either real or personal, in order to restore the parties to the status quo prior to the purported Will dated April 2, 2014.

COUNT VI - RESTITUTION

39. Caveators restate and reincorporate paragraphs 1-38 herein as if set forth in their entirety here.

40. As a result of her undue influence Springs and her son purportedly wrongfully and unconscionably inherited the entire estate of Bobby J. Freeman.

41. Springs' unconscionable and wrongful conduct in obtaining the assets of the estate has caused her to be unjustly enriched to the extent that it would be unconscionable to permit her to retain all legal and equitable interest in the assets of the estate.

42. As a result, in the alternative, Caveators should be entitled to restitution to make them whole.

WHEREFORE, Caveators pray that this Court enter judgment in their favor and against Respondent, and grant the following relief:

1. Deny the allowance of the purported Will dated April 2, 2014;
2. In the alternative, impose a constructive trust over the assets of the Estate of Bobby J. Freeman;
3. Rescind the transfer of any property to Springs;
4. Order Restitution to Caveators;
5. Stay all probate proceedings until a final decision by the Court; and
6. Grant Caveators their costs, attorney's fees and such other and further relief this Court deems just.

Dated: *July 18, 2014*

HUDSON, JONES, JAYWORK & FISHER, LLC

By: */s/ Adam C. Gerber*

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